



DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2020-0016]

Meeting to Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of meeting; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will hold a meeting remotely via web conference to implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic. A portion of the meeting will be open to the public.

DATES: The meeting will take place on Friday, January 15, 2021, from 2 to 4 p.m. Eastern Time (ET). The first portion of the meeting, from approximately 2 to 3 p.m. ET, will be open to the public.

Written comments for consideration at the meeting must be submitted and received by 12 p.m. ET on Thursday, January 14, 2021. Follow-up comments must be received by 5 p.m. ET on Friday, January 22, 2021, to be considered.

ADDRESSES: The meeting will be held via web conference. Members of the public may view the public portion of the meeting online at <https://pandemicdpa708.com>.

Reasonable accommodations are available for people with disabilities. To request a reasonable accommodation, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section below as soon as possible. Last minute requests will be accepted but may not be possible to fulfill.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered at the meeting. The Meeting Objectives listed below outline these issues. Written comments must be identified by Docket ID FEMA-2020-0016, and submitted by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* FEMA's Office of Business, Industry, Infrastructure Integration, OB3I@fema.dhs.gov.

Instructions: All submissions must include the docket ID FEMA-2020-0016. Comments received, including any personal information provided, may be posted without alteration at <https://www.regulations.gov>.

Docket: For access to the docket and to read comments received by FEMA, go to <https://www.regulations.gov> and search for Docket ID FEMA-2020-0016.

FOR FURTHER INFORMATION CONTACT: Robert Glenn, Office of Business, Industry, Infrastructure Integration, via email at OB3I@fema.dhs.gov or via phone at (202) 212-1666.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided as required by section 708(h)(8) of the Defense Production Act (DPA), 50 U.S.C. 4558(h)(8), and consistent with 44 CFR part 332.

The DPA authorizes the making of “voluntary agreements and plans of action” with, among others, representatives of industry and business to help provide for the national defense.¹ The President’s authority to facilitate voluntary agreements was delegated to the Secretary of Homeland Security with respect to responding to the spread

¹ 50 U.S.C. 4558(c)(1).

of COVID-19 within the United States in Executive Order 13911.² The Secretary of Homeland Security has further delegated this authority to the FEMA Administrator.³

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission, FEMA completed and published in the *Federal Register* a “Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic” (Voluntary Agreement).⁴ Unless terminated prior to that date, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Agreement may be used to prepare for or respond to any pandemic, including COVID-19, during that time.

On December 7, 2020, the first plan of action under the Voluntary Agreement – the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Personal Protective Equipment (PPE) to Respond to COVID-19 (Plan of Action) – was finalized.⁵ The Plan of Action established several sub-committees under the Voluntary Agreement, focusing on different aspects of the Plan of Action.

The meeting will be chaired by the FEMA Administrator or his delegate, and attended by the Attorney General or his delegate and the Chairman of the Federal Trade Commission or his delegate. In implementing the Voluntary Agreement, FEMA adheres to all procedural requirements of 50 U.S.C. 4558 and 44 CFR part 332.

² 85 FR 18403 (Apr. 1, 2020).

³ DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).

⁴ 85 FR 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the voluntary agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the *Federal Register* on the same day. 85 FR 50049 (Aug. 17, 2020).

⁵ See 85 FR 78869 (Dec. 7, 2020). See also 85 FR 79020 (Dec. 8, 2020).

Meeting Objectives: The objective of the meeting is to update the general public, and private industry partners, on the status of the Voluntary Agreement, PPE Plan of Action, and potential future Plans of Action.

Meeting Closed to the Public: By default, the DPA requires meetings held to implement a voluntary agreement or plan of action be open to the public.⁶ However, attendance may be limited if the Sponsor⁷ of the voluntary agreement finds that the matter to be discussed at a meeting falls within the purview of matters described in 5 U.S.C. 552b(c). The Sponsor of the Voluntary Agreement, the FEMA Administrator, found that a portion of this meeting to implement the Voluntary Agreement involves matters which fall within the purview of matters described in 5 U.S.C. 552b(c) and that portion of the meeting will therefore be closed to the public.

Specifically, the meeting to implement the Voluntary Agreement may require participants to disclose trade secrets or commercial or financial information that is privileged or confidential. Disclosure of such information allows for meetings to be closed pursuant to 5 U.S.C. 552b(c)(4). In addition, the success of the Voluntary Agreement depends wholly on the willing and enthusiastic participation of private sector participants. Failure to close this meeting could have a strong chilling effect on participation by the private sector and cause a substantial risk that sensitive information will be prematurely released to the public, resulting in participants withdrawing their support from the Voluntary Agreement and thus significantly frustrating the implementation of the Voluntary Agreement. Frustration of an agency's objective due to premature disclosure of information allows for the closure of a meeting to pursuant to 5 U.S.C. 552b(c)(9)(B).

⁶ See 50 U.S.C. 4558(h)(7).

⁷ “[T]he individual designated by the President in subsection (c)(2) [of section 708 of the DPA] to administer the voluntary agreement, or plan of action.” 50 U.S.C. 4558(h)(7).

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Federal Emergency Management Agency.

[FR Doc. 2021-00505 Filed: 1/12/2021 8:45 am; Publication Date: 1/13/2021]